



Financial Services Tax Group

News Letter

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New Treaty Forms

On 20 May 2004, in a Circular addressed to the Regional Taxation Bureaus, the Commissioner of the National Tax Agency (“NTA”) released revised and new application forms for relief from tax pursuant to Japan’s Income Tax Conventions. These forms were subsequently released to the public when posted on the NTA’s website on Thursday, 27 May 2004.

Effective dates

These forms are effective immediately for all treaties.

Revised & new forms

Comprehensive amendments have been made to the application forms for taxpayers seeking relief under any of Japan’s double tax treaties with 55 countries.

The revised and new forms, deal broadly with the onerous requirements imposed under the new US-Japan double tax treaty. The new treaty applies for withholding tax purposes from 1 July 2004 (unless a taxpayer has deferred the treaty for 12 months). However, the new forms allow for an expansion beyond US-Japan investments since the Ministry of Finance’s stated approach is to use the new US treaty as the model treaty for re-negotiating its existing European treaties, many of whom are over 20 years old. According to recent press reports, the Dutch treaty with favorable provisions for inbound investments into Japan is the first such treaty in line for re-negotiation.

Complex rules

The most significant benefits arising from the new US-Japan treaty are the lower withholding tax rates for dividend, interest and royalties. However, complex rules and detailed tests in order to substantiate treaty entitlements were included in the text of the new treaty.

These tests, in the form of a comprehensive limitation on benefits test, anti-conduit rules for certain income, and the legal concept of beneficial ownership, must now be fully understood and complied with by taxpayers when submitting their treaty relief forms.

The limitation on benefits test is a multi-layered test and a trap for the unwary. We strongly advise when submitting application forms, including the attachment on the limitation on benefits test, that advice be sought as to whether these tests are satisfied.

What's important?

There are numerous details required in each form, however the most significant for the Financial Services industry are those seeking dividend, interest and royalty withholding tax relief. These are set out in revised Forms 1, 2, 3 respectively together with their requisite attachments (new Forms 16, 17 and 18) and have essentially common characteristics.

In order to limit our comments to the substantive changes, we refer to the following main changes when claiming treaty relief:

- Details as to whether the entity claiming relief is taxable in the other treaty state (entity level taxation) or whether it has elected taxation at member level. In some cases, details regarding the fiscally transparent nature of investment vehicles such as Limited Partnerships and Limited Liability Companies will be required as will certificates of tax residency in their home country of non-residents claiming treaty relief.
- If an entity has elected member level taxation, particulars regarding taxable status of the entity claiming treaty relief, their tax residency together with a listing of the members of a foreign company or the partners of an entity (New Form 16).
- Inclusion of a Limitation on Benefits attachment, if required under the terms of the treaty under whose articles relief is claimed (New Form 17). This form sets out the various tests under Article 22 of the new US-Japan treaty (as the first and only treaty to date with a comprehensive limitation on benefits clause), which has been the subject of much discussion amongst professionals, the Financial Services industry and the NTA.
- New Competent Authority application form (New Form 18) in accordance with Article 22(4) of the new US-Japan treaty. This allows residents who do not fall explicitly within the provisions of the Limitation on Benefits test under Article 22 to make an application for relief directly to the Competent Authority. This will be relevant for instance for some private companies who may otherwise not satisfy the Limitation on Benefits test.

Listing

The following is a list of the revised and new forms. Copies of the forms are readily accessible on the NTA's website: www.nta.go.jp

NUMBER	REVISED FORMS
1	Relief from Japanese Income Tax on Dividends
2	Relief from Japanese Income Tax on Interest
3	Relief from Japanese Income Tax on Royalties
6	Relief from Japanese Income Tax on Remuneration Derived from Rendering Personal Services
7	Relief from Japanese Income Tax on Income Earned by Professionals, Entertainers, Sportsmen, or Temporary Visitors
8	Relief from Japanese Income Tax on Remuneration, Grants, etc., Received by Professors, Students, or Business Apprentices

9	Relief from Japanese Income Tax on Pensions, Annuities, etc.
10	Relief from Japanese Income Tax on Not Expressly Mentioned in the Convention
11	Application Form for Refund of the Overpaid Withholding Tax other than Redemption of Securities and Remuneration Derived from Rendering Personal Services Exercised by an Entertainer or a Sportsman in accordance with the Income Tax Convention
12	Application Form for Refund of the Withholding Tax on Remuneration Derived from Rendering Personal Services Exercised by an Entertainer or a Sportsman in accordance with the Income Tax Convention
13	Application Form for Refund of the Withholding Tax on Profit from Redemption of Securities in accordance with the Income Tax Convention (Discount Government Bonds only)
14	Application Form for Refund of the Withholding Tax on Profit from Redemption of Securities in accordance with the Income Tax Convention (For Discount Debentures other than Discount Government Bonds)

NUMBER	NEW FORMS
15	Relief from Japanese Income Tax or Corporation Tax for Japanese Source Income to Report
16	List of the Members of Foreign Company or List of the Partners of Entity
17	Attachment Form for Limitation on Benefits Article
18	Application Form for Competent Authority Determination

Topics provided in this Financial News Letter are based only on general case studies. For practical application to an individual case or a transaction structure, please refer to your usual PwC contact.

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